

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: NAIF SAMUEL KHOURY
ARKANSAS BAR NO. 75070
CPC DOCKET No. 2007-057

FILED

JAN 18 2008

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by a referral from the Arkansas Supreme Court in the case of Henry Vidal v. State of Arkansas, CR 2007-259. The referral related to the representation of Mr. Vidal by Mr. Khoury in 2007.

On June 27, 2007, Respondent was served with a formal complaint, supported by recrods from the appeal of Henry Vidal. A response was filed. The matter proceeded to ballot vote. Respondent requested a public hearing. Prior to the hearing, the Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

Henry Vidal was charged in Crawford County Circuit Court of Possession of Cocaine With Intent To Deliver. On May 16, 2006, Vidal entered a plea of guilty in exchange for a sentence of forty years in the Arkansas Department of Correction with twenty years suspended. A Judgment and Commitment Order was entered on May 26, 2006. Mr. Khoury, who represented Mr. Vidal at all times in Crawford County Circuit Court, filed two Motions to Vacate the Plea on June 21, 2006 and June 26, 2006. The trial court set an August 15, 2006, hearing on the Motion to Vacate the Plea. Pursuant to Rule 2(b)(1) of the Rules of Appellate Procedure—Criminal, if a trial court neither grants nor denies any outstanding post-trial motion within thirty days of its filing, the motion shall be deemed denied as of the thirtieth day, and the notice of appeal shall be filed within thirty days from

that date. As there was no ruling from the Crawford County Circuit Court on either motion within thirty days of June 26, 2006, the post-trial motion was deemed denied on July 26, 2006, and a notice of appeal was due to be filed no later than August 25, 2006. Khoury filed a notice of appeal on September 14, 2006, twenty days after the August 25, 2006, deadline had passed. In his response, Mr. Khoury stated that the trial court held a hearing on August 15, 2006, at which time the trial court denied the post-trial motions filed on June 21, 2006, and June 26, 2006. Mr. Khoury believed that the time for the notice of appeal began to run at that time and not on the July 26, 2006, date. As he filed a notice of appeal on September 14, 2006, he believed his notice of appeal to be timely.

On March 5, 2007, Mr. Khoury tendered the record to the Arkansas Supreme Court Clerk. The Clerk refused to lodge the record as the notice of appeal was late. Mr. Khoury was advised by the Arkansas Supreme Court Clerk that he needed to file a Motion for Rule on the Clerk. On March 14, 2007, Mr. Khoury filed a Motion for Rule on the Clerk. The Arkansas Supreme Court granted the motion in a per curiam order and referred the matter to the Office of Professional Conduct.

Upon consideration of the formal complaint and attached exhibit materials, the consent proposal, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Naif Samuel Khoury violated Model Rule 1.3 when he failed to file a notice of appeal on behalf of his client, Henry Vidal, within thirty days following the deemed denial of the two motions to vacate plea on July 26, 2006. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. Naif Samuel Khoury violated Model Rule 8.4(d) when he failed to file in a timely manner with the Arkansas Supreme Court the record of the lower court proceedings on behalf of Henry

Vidal, his client, which resulted in a delay in the orderly and timely resolution of appellate proceedings and when his failure to file his client's record with the Arkansas Supreme Court required the Court to expend additional time and effort which would not have been necessary otherwise. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that NAIF SAMUEL KHOURY, Arkansas Bar ID# 75070, be, and hereby is, CAUTIONED for his conduct in this matter; fined the sum of Five Hundred Dollars (\$500); and assessed costs in the amount of Fifty Dollars (\$50.00). The fine and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults
Steven Shults, Chair, Panel A

Date: JANUARY 18, 2008